

REMARKS

Claims 1-21 are currently pending. Applicants respectfully request reconsideration of the above-identified application in light of the following remarks.

Claims 1, 5 and 17-19 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,079,184 to Cassou et al. ("Cassou") in view of U.S. Pat. No. 6,149,579 to Lee ("Lee").

Applicants respectfully submit that this rejection is improper and should be withdrawn. Lee is not prior art to the present application under 35 U.S.C. §102 and Cassou cannot be used in a rejection under 35 U.S.C. §103, since it and the present application were commonly owned at the time the invention was made (35 U.S.C. §103(c)).

Lee is not prior art to the present application because it was filed after the priority date of the present application. Lee was filed on November 30, 1998, while the present application is entitled to the priority of FR98/06393, filed May 20, 1998. Because the priority date to which the present application is entitled is earlier than Lee's filing date, Lee is not prior art to the present application under 35 U.S.C. §102.

Applicants already pointed this out in Applicants' Amendment After Final Rejection dated January 30, 2003, which was accompanied by a certified English language translation of the French priority document. In response, the Examiner withdrew all rejections based on Lee (See Final Rejection dated February 20, 2003 at page 6, first paragraph), and presented new rejections in a second Final Rejection. Because Lee is not prior art to this application, the rejection of Claims 1, 5 and 17-19 under 35 U.S.C. §103(a), as being unpatentable over Cassou in view of Lee should be withdrawn.

Moreover, Cassou cannot be used as prior art in a rejection of Claims 1, 5 and 17-19 under 35 U.S.C. §103(a). Cassou, at best, qualifies as prior art for the present application under 35 U.S.C. §102(e), since the present application was filed after the filing date of Cassou, but prior to issuance of Cassou. A reference qualifying as prior art only under 35 U.S.C. §102(e) cannot be used in a rejection under 35 U.S.C. §103 if the reference and the claimed invention were commonly owned, or subject to an obligation of assignment to the same entity at the time the invention was made.

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e),(f),and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. 35 U.S.C. §103(c)

Cassou was assigned to “Instruments de Medicine Veterinaire,” as can be seen on the front page of the Cassou patent. “Instruments de Medicine Veterinaire” has since changed its name to “IMV Technologies.” The present application was assigned to “IMV Technologies” by an assignment executed by the inventors on December 16, 1999, which assignment was subsequently recorded in the U.S. Patent and Trademark Office. Thus, the subject matter described in Cassou and the claimed invention were, at the time the invention was made, subject to assignment to the same person. Accordingly, Cassou cannot be used as a reference in a rejection under 35 U.S.C. §103 against the claimed invention.

For at least the above-discussed reasons, the rejection of Claims 1, 5 and 17-19 under 35 U.S.C. §103(a) is improper and should be withdrawn. Withdrawal of the rejection applied to Claims 1, 5 and 17-19 under 35 U.S.C. §103(a) as being unpatentable over Cassou in view of Lee is respectfully requested.

Claims 2-4, 8-10 and 14-16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Cassou in view of Lee, further in view of U.S. Pat. No. 2,648,463 to Scherer (“Scherer”), and Claims 11-15 and 20-21 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Cassou in view of Lee, further in view of U.S. Pat. No. 4,804,363 to Valeri (“Valeri”).

For the reasons set forth above, any rejection of Applicants’ claims relying on the combination of Cassou and Lee is improper. Moreover, neither Scherer nor Valeri remotely teach or suggest the subject matter claimed in Claims 1-21. Scherer describes a plastic container with a rupturable sealed end, and Valeri is describes an apparatus for storing and processing blood. Scherer has been relied upon by the Office Action for allegedly teaching a “peelable” seal. See Office Action at page 3. Valeri has been relied upon by the Office Action for allegedly teaching “a marking area.” See Office Action at page 4.

For at least the above reasons, withdrawal of the rejection applied to Claims 2-4, 8-10 and 14-16 under 35 U.S.C. §103(a) as being unpatentable over Cassou in view of Lee, further in view of Scherer, and Claims 11-15 and 20-21 under 35 U.S.C. §103(a) as being unpatentable over Cassou in view of Lee, further in view of Valeri is respectfully requested.

Applicants note that at the end of the Office Action, in a Response to Arguments section (Office Action, page 5), the Office Action discusses the combination of Christine and Cassou. While no claim rejections have been made in the current Office Action over this combination of references, in an abundance of caution and in the interest of furthering prosecution, Applicants respond to the Office Action’s remarks.

The Office Action argues that “[t]he Christine reference has been relied upon to demonstrate that bags with heat-peelable seals may comprise openings on either side of the bag”

and that “the combined Christine/Cassou reference discloses the invention as claimed.” See Office Action at page 5, last paragraph.

As set forth above, the Cassou reference cannot be used in a rejection of claims under 35 U.S.C. §103 against the claimed invention, including a rejection combining Cassou with U.S. Pat. No. 5,391,163 to Christine.

Applicants further note that neither Cassou nor Christine were used alone in rejecting any of Applicants’ Claims 1-21. Applicants further submit that if a combination of these references were proper (which for the above-described reasons it is not), the combined teaching of Cassou and Christine would still not teach or suggest the subject matter as claimed in Claims 1-21.

Christine describes a pouch for administering medical fluids. In the pouch (10) described by Christine, the portion situated between fused portions 26 and 28 does not teach or suggest “a generally annular neck with an outer insertion flare,” as claimed in independent Claim 1. Moreover, the passage (36/36’) of Christine, which is opposite the seam (34), is not able to receive a tube, since coupler (16/16’) would block insertion of such a tube. There is not sufficient space for receiving an additional tube. In Christine, a fluid administration set (50) communicates with the coupler (16/16’). Christine does not teach or suggest a tube being received by a filler passage having a generally annular neck with an outer insertion flare, in which the filler passage is defined by an interruption in a weld, as required by independent Claim 1.

In any event, regarding Cassou, this reference describes the benefit of filling a pouch with a clean fill device such as that illustrated in Figures 3 and 4. The fill device includes a ring (29) having a smaller diameter region (30) inserted between the two films. After a filling is carried out, the tubular needle 21 is moved upward in longitudinal translation, and almost

inevitably has at least one droplet of semen at the free end and around the nozzle (22). When the free end of the nozzle (22) reached that of the ring (29), either the residual droplet of semen is detached from the nozzle (22) by the free end of the smaller diameter region (30) of the ring, or continued upward movement in translation of the nozzle withdraws the droplet inside the ring. If the quantity of residual semen is relatively large, some is detached and drops back into the pocket and/or is deposited in the filler tube and some is retracted into the ring, but the funnel part and the area to be sealed by a weld remain dry. When the upper part of the dose is crushed during welding, no liquid film extends as far as the weld, and it follows that no liquid film would extend any further than this. See Cassou, column 6, lines 32-53.

In Cassou, the reason for maintaining a dry funnel and sealing area is to prevent difficulty in separating the two films when opening the pouch, since an adhesion force would be produced if even a thin film of semen existed in the sealing area. See Cassou, column 4, lines 42-58. Thus, it may be seen that the entire basis of Cassou rests on the assumption that the same passage is used for filling the pouch with semen and for emptying the pouch. Providing a second passage in Cassou is clearly contrary to the teaching of this reference.

Moreover, in light of Cassou's teaching of a pouch with a single and combined function inlet/outlet, by "merely duplicating the essential working parts," one would achieve a device having two separate pouches, each with a single inlet/outlet. If Cassou and Christine were properly combinable (which they are not), and in view of the teaching of Cassou, a pouch with a single inlet/outlet as shown at the bottom of Christine, but capable of cooperating with a clean fill device, as in Cassou, would result. Such a device would not teach or suggest Applicants' claimed invention.

Finally, Applicants submit that neither Cassou nor Christine teach or suggest a pouch having two passages having a similar shape, namely a generally annular neck with an outer insertion flare, each passage being defined by an interruption in the weld, as claimed by Applicants.

In sum, the teachings of Cassou are totally based on an assumption that there is only a single fill/drain passage. In Christine, the two passages are shaped differently, and in addition, the drain passage of Christine includes a coupler (16/16'). However, Applicants submit that any rejection under 35 U.S.C. §103 over Cassou, alone or in combination with another reference would be improper for the reasons set forth above.

CONCLUSION

In light of the foregoing, Applicants respectfully submit that all claims, as currently presented, define patentable subject matter over the cited art, considered alone or in combination. An early Notice of Allowance is earnestly solicited.

Respectfully submitted,



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